

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

STATE OF NEW MEXICO, *ex rel.*
State Engineer

Plaintiff

vs.

ROMAN ARAGON, *et al.*,

Defendants.

69cv07941-MV/LFG

RIO CHAMA STREAM SYSTEM

Section 7: Tierra Amarilla,

MOTION BY THE STATE OF NEW MEXICO
FOR ORDER TO REQUIRE DEFENDANTS IN THE
TIERRA AMARILLA SUBSECTION TO FILE STATEMENTS OF CLAIMS
BASED ON THE TREATY OF GUADALUPE HILDALGO

The plaintiff State of New Mexico, *ex rel.* State Engineer (“State”) moves the Court for the entry of an order that requires defendants in the Tierra Amarilla subsection that signed and approved a consent order to file a statement of claims setting forth any and all claims to the use of water that are based on the Treaty of Guadalupe Hidalgo, and in support of this motion plaintiff states as follows:

1. Under Section II (A)(3) of the *Procedural Order for the Adjudication of Water Rights Claims in Section 7 of the Rio Chama Stream System* (Doc. 6939, filed November 19, 2002) (“2002 Procedural Order”), by signing and approving a consent order, an individual defendant in Section 7 did not waive any claim of right based on the Treaty of Guadalupe Hidalgo (“the Treaty”). 2002 *Procedural Order* at 4. The non-waiver provision was included at the request of counsel for Asociación de Acéquias Norteñas de Rio Arriba in order to assure individual subfile defendants that any such claims could be brought at a later date in the proceedings, and that the

entry of a consent order would not prejudice any such claim on their part.

2. In order to complete the individual subfile proceedings in Section 7, the State believes that defendants that signed and approved an individual consent order should be required to assert at this time any claim of right based on the Treaty. This could be achieved by entry of an order that requires those defendants to file a statement of claims with the Court setting forth any and all claims to the use of water that are based on the Treaty, together with the general factual and legal grounds for those claims. A defendant that fails to timely file a statement of claims with the Court should thereafter be precluded from raising any claim of right to the use of water based on the Treaty in these proceedings.

3. Due to the large number of defendants in Section 7, the State believes that it should conduct the processes described in paragraph 2 above by individual subsections rather than attempt to involve all defendants in Section 7 at the same time. In addition, the factual context and historical background may differ among defendants in the various subsections. Once the claims raised by defendants in one subsection have been resolved, the State will request that the Court initiate the process again in one of the remaining subsections until the entire process in Section 7 is completed. The State intends to begin this process in the Tierra Amarilla subsection and work north in the same order in which the recent show cause proceedings on priorities and irrigation water requirements were scheduled. Claims in the Village of Chama subsection would be the last to be addressed.

4. After any statements of claims based on the Treaty have been filed with the Court, the State will request a mandatory scheduling conference. At that conference, the State and the defendants that filed the claims should be required to address any of the following matters:

a. A proposed schedule for discovery including initial disclosures, disclosure

of expert testimony and reports, identification of lay witnesses and exchange of exhibits;

- b. Scheduling of any anticipated dispositive motions; and
- c. Scheduling of a final pretrial conference and entry of a pretrial order.

- 5. A proposed order granting this motion is attached hereto as Exhibit 1.

WHEREFORE, the plaintiff State of New Mexico requests the Court enter an order that requires defendants in the Tierra Amarilla subsection that have signed and approved a consent order describing their water rights to file a statement of claims setting forth any and all claims to the use of water that are based on the Treaty of Guadalupe Hidalgo.

Respectfully submitted,

/s/ Ed Newville
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 23rd day of May 2014, I filed the foregoing electronically through the CM/ECF system which caused the parties on the electronic service list, as more fully set forth in the Notice of Electronic Filing, to be served via electronic mail.

/s/ Ed Newville
EDWARD G. NEWVILLE